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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 LENIER AYERS,

11 Plaintiff,

12 v.

13 HENRI RICHARDS, *et al.*,

14 Defendants.

Case No. 08-5541RJB

ORDER RE REPORT AND
RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation of Magistrate Judge
16 Karen L. Strombom (Dkt. 11), and on Plaintiff's First Amended Complaint (Dkt. 12). The Court has
17 considered the relevant documents and the remainder of the file herein.

18 On September 29, 2008, Plaintiff filed a Petition for Writ of Mandamus (Dkt. 4) requesting
19 that the Magistrate Judge order the removal of an employee of the Special Commitment Center
20 ("SCC") because Plaintiff alleged that the employee deliberately subjected the Plaintiff to physical
21 and emotional abuse. Dkt. 4. On November 12, 2008, the Magistrate Judge entered an Order to
22 Show Cause (Dkt. 7) stating that the Plaintiff's complaint had no arguable basis in law or fact
23 because the district court does not have jurisdiction to issue a writ of mandamus to state officers.
24 Dkt. 7. Due to the deficiencies in the Plaintiff's complaint, the Magistrate Judge ordered the Plaintiff
25 to file an amended complaint curing the deficiencies, or to show cause explaining why this matter
26 should not be dismissed, by December 5, 2008. Dkt. 7. On December 31, 2008, Magistrate Judge
27 Strombom entered a Report and Recommendation stating that the Plaintiff's action should be
28 dismissed with prejudice for failure to state a claim. Dkt. 11. On January 5, 2009, the Plaintiff filed

1 an amended complaint late. Dkt. 12.

2 The Plaintiff's amended complaint appears to have been untimely filed, but in the interest of
3 fairness and justice in light of Plaintiff's pro se status, this Court should accept the amended
4 complaint for filing and refer the matter to the Magistrate Judge for consideration. An amended
5 pleading supersedes the original pleading. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
6 1542, 1546 (9th Cir. 1990). Because Plaintiff's amended complaint supersedes prior complaints, the
7 Magistrate Judge's Report and Recommendation is moot, and should be rejected as such. The
8 undersigned has not considered the adequacy of the amended complaint.

9 The Court does hereby ORDER:


10 Plaintiff's first amended complaint is accepted for filing.

11 The case is re-referred to the Magistrate Judge;

12 The Report and Recommendation (Dkt. 11) is rejected as moot;

13 The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants and to
14 the Hon. Karen L. Strombom.

15 Dated this 2nd day of February, 2009.

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19 ROBERT J. BRYAN
United States District Judge